IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHORT CAUSE SUIT NO.257 OF 1986

M/s.B. Mittal & Co. : Plaintiff

V/s.

M/s.Essken Engineering Enterprises Pvt. Ltd. : Defendant

...

Mr.S. Bharucha i/b. M/s.Purohit & Purohit for the plaintiff.

...

CORAM : S.A.BOBDE, J.

DATE : DECEMBER 03, 2007.

P.C.

1. This is a suit for recovery of a sum of Rs.72,033.25 upto the date of the suit and interest at the rate of 15% per annum on Rs.50,000/- from the filing of the suit till realisation. The suit is for recovery of an amount advanced by the plaintiff by way of a cheque to the defendant. The suit is proceeded ex parte against the defendant who has filed Written Statement.

2. The plaintiff has not filed original documents such as the cheque book and the original Bank statement showing the advance of the amount to the defendant. However, they

applied for permission to lead secondary evidence in regard to the Bank statement, etc., on the ground that the papers have been misplaced and lost. It is an appropriate case to permit leading of secondary evidence. Hence, the said permission is granted.

3. The documents tendered by the plaintiff and referred to in the affidavit of evidence are taken on record and marked Exhibits ‘P-1’ to ‘P-11’.

4. There is a photocopy of the Bank statement of the year 1983. The book entry shows an entry of Rs.50,000/- in favour of the defendant. There is a corresponding entry in the defendant’s Bank statement, a copy of which was forwarded to the earlier Advocate for the plaintiff by their Advocate’s letter dated 23.10.1986. Apparently, the Bank statement shows deposit of Rs.50,000/- by cheque in February, 1983.

5. Before filing the suit, the plaintiff had served notice on the defendant through their Advocate. The defendant in its Written Statement claimed that an amount of Rs.50,000/- was advanced by the plaintiff to M/s.Gitanjali Chemicals Pvt. Ltd., and not to the defendant. The defendant’s version does not appear to be true.

6. Having regard to the affidavit of evidence and the documents on record, the suit is hereby decreed in terms of prayer clause (a). Decree be drawn up accordingly. The amount deposited by the defendant in the suit shall be allowed to be withdrawn by the plaintiff in part-satisfaction of the decree upon a proper application being made.

S.A. BOBDE, J.